

176.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

3C
SKD
SKD/KKS
BC/RVD/JM
SI/DA
LYK/WT

In the Matter of the Application)

HAWAIIAN ELECTRIC COMPANY, INC.)

For Approval of Rate Increases and)
Revised Rate Schedules and Rules)

Docket No. 2006-0386

PUBLIC UTILITIES
COMMISSION

2007 OCT 26 P 3 46

FILED

**PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

**BRIEF OF THE
DEPARTMENT OF THE NAVY,
Utility Rates and Studies Office**

October 26, 2007

RANDALL Y.K. YOUNG
Associate Counsel (Code 09C)
Naval Facilities Engineering
Command, Pacific
258 Makalapa Drive, Suite 100
Pearl Harbor, HI 96860-3134
Telephone (808) 472-1195

**ATTORNEY FOR
DEPARTMENT OF DEFENSE**

**DEPARTMENT OF THE NAVY
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
POST-HEARING BRIEF
CONTENTS**

	<u>Page</u>
I. PROPOSED FINDINGS OF FACT CONCERNING HECO'S PENSION ASSET - GENERAL	1
A. Testimony.....	1
B. Summary of the Dispute.....	2
II. FACTUAL ANALYSIS AND ARGUMENT CONCERNING HECO'S PENSION ASSET	3
A. Ratepayers have provided more than adequate payments to HECO related to pensions over the years to cover HECO's pension asset.	3
B. Agreement of HECO's witness concerning the fundamental principle	6
C. Precedent	8
D. The pension asset should be excluded from HECO's rate base, as recommended by the DOD and CA.....	10
E. HECO's argument for prudent investment.....	10
F. Provisions of the Settlement	12
G. Other Jurisdictions	14
III. PROPOSED CONCLUSIONS OF LAW.....	15

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF
THE DEPARTMENT OF THE NAVY**

Docket No. 2006-0386

I. Proposed Findings of Fact concerning HECO's Pension Asset - General

A. Testimony

On the pension asset issue, the United States Department of the Navy representing the consumer's interest of the Department of Defense presented the testimony of Ralph C. Smith, a certified public accountant and senior regulatory consultant with the firm Larkin & Associates PLLC. See DOD T-1, pages 8-12 and DOD-108. Steven Carver, a CPA and regulatory consultant with the firm Utilitech, presented testimony on the pension asset issue on behalf of the Consumer Advocate. See CA T-3, pages 7-46, and CA-101, Schedule B-2, and CA-302 through 304. HECO's primary witness on the pension asset issue was Patsy Nanbu, HECO's Controller. See HECO T-10, pages 58-83, and HECO-1021. Also see HECO's June 2007 Update, HECO T-10, Attachment 10, which updated HECO-1021. Other HECO witnesses including Robert Alm, Senior Vice President of Public Affairs, Tayne Sekimura and Julie Price also presented testimony on the issue of pension accounting and whether a pension asset should be included in rate base. See HECO T-1, pages 40-41; HECO T-19, June 2007 update (submitted 7/25/07) pages 2-3¹; and HECO T-12, pages 4-15

¹ This testimony relates primarily to capital structure, AOCI charges related to the qualified pension and OPEB, and HECO's proposed pension and OPEB tracking mechanisms, none of which remain in dispute after the parties' settlement in the current HECO rate case.

B. Summary of the Dispute

HECO advocates including in rate base its updated pension asset of \$59.405 million less related accumulated deferred income taxes (ADIT) of \$23.114 million. This issue has a net rate base impact of approximately \$36.291 million for the removal of HECO's pension asset less the related ADIT.

HECO's basic rationale for including the pension asset in rate base is that investors funded it. HECO T-10, at page 78, presents HECO's rationale for including the pension asset in rate base:

"Including the prepaid pension asset in rate base is proper because: (1) the prepaid pension asset reflects a prudent investment, funded by investors, that is used or useful in providing electric utility service, (2) the prepaid pension asset benefits the ratepayers and (3) other jurisdictions have allowed a prepaid pension asset to be included in rate base."

HECO refers to the results of applying Statement of Financial Accounting Standards No. 87 (FAS 87) as "net periodic pension cost" or "NPPC."

Ms. Nanbu presents HECO's theory of why the Company believes that the pension asset was funded by investors at HECO T-10, page 79:

"From the standpoint of accounting theory, the prepaid pension asset was funded by investors. It is a fundamental principle of accounting that all assets must be funded either by debt or equity. Investors, not ratepayers, provide the funds for a corporation's debt and equity. When an asset is positive it necessarily means that with respect to total company costs the shareholders have contributed some surplus that needs to be recognized in rate base.

Payments made to the pension fund were from the same sources of funds that HECO would use to make any investment. There were no special contributions from any source. Ratepayers do not fund Company investments. Rather, they pay for services and those payments are recorded as revenues. Investor funds are used to fund the pension plan just as investor funds are used to construct or purchase the gross plant assets. Investors contributed \$138.3 million to the pension plan for the period 1987 to 2005 (see HECO-1021 page 2)."

1 In contrast with HECO's position, the DOD and CA recommend that this HECO proposal
2 be rejected and, accordingly, HECO's proposed rate base be reduced by \$36.291 million. The
3 parties are in agreement on the rate base amounts, but disagree as to whether the pension asset
4 should be included in rate base in this proceeding. Whether or not HECO should be allowed to
5 include a pension asset in rate base was extensively discussed in HECO's prior rate case, Docket
6 No. 04-0113. As in that case, HECO has similarly failed to demonstrate that investors have
7 funded the pension asset. As part of the settlement in the current rate case, the pension asset has
8 been excluded from rate base. Moreover, the terms of the pension tracker that was incorporated
9 into the settlement make removal of the pension asset from rate base even more compelling in
10 the current case than the factual situation that existed in Docket No. 04-0113.

11 **II. Factual Analysis and Argument concerning HECO's Pension Asset**

12 *A. Ratepayers have provided more than adequate payments to HECO related to pensions over* 13 *the years to cover HECO's pension asset.*

14 HECO's assumption that investors have "funded" the pension asset is overly simplistic
15 and ignores the amounts of NPPC that have been included in rates. Given the ratemaking history
16 of HECO's pensions, it would be highly inequitable to include a \$59.4 million pension asset in
17 rate base in the current case.

18 The prepaid pension asset is the net of the cumulative contributions the Company has
19 made to the pension fund for its employees less the recognized pension liability (i.e., the
20 accumulated net periodic pension cost or NPPC). The parties agree on this fact.

21 The DOD and CA recommend that HECO's pension asset be excluded from rate base
22 because HECO has not demonstrated that investors have funded the pension asset. DOD T-1,
23 page 9-10; CA T-3, pages 7-53.

1 First, HECO's analysis fails to recognize the amounts included in rates for NPPC and
2 collected from ratepayers for pension expense. The DOD's and CA's presentations do recognize
3 and account for the amounts of NPPC included in rates, and therefore represent a more complete
4 and appropriate analysis from which the issue of whether to include the pension asset in rate base
5 can be evaluated.

6 As shown on DOD-108, page 2, and explained in DOD T-1, pages 9-10, ratepayers have
7 provided approximately \$47 million to HECO related to pensions during the period 1996 through
8 2007. As shown on DOD-108, page 2, column B, line 23, for the period 1996 through 2005 (the
9 test year in HECO's last fully decided rate case), HECO recorded negative pension costs of
10 approximately \$30.2 million. The logical conclusion is that the \$30.2 million of negative
11 pension cost that HECO recorded from 1996-2005 was not provided to ratepayers, i.e.,
12 ratepayers were not given "credit" for this negative pension cost and it was not refunded by
13 HECO to ratepayers, but rather the large net negative pension cost for this period increased net
14 income to the benefit of HECO's investors.

15 In a rate case the amount to be provided annually by ratepayers for pensions as part of a
16 total revenue requirement might be based upon the NPPC in the test year. In between rate cases,
17 the annual NPPC can fluctuate significantly and substantial decreases in pension cost between
18 rate cases tend to inure to shareholders, not ratepayers. HECO did not re-establish base rates
19 through a rate case during this period, other than for the Interim rate adjustment made in Docket
20 No. 04-0113, which recognized an annualized NPPC amount of \$4.588 million for ratemaking
21 purposes. As shown on DOD-108, page 2, column B, line 24, HECO's FAS 87 accruals for the
22 period 1996 through 2007 accumulate to net periodic pension costs of only \$1.735 million.

As shown in column F, the NPPC included in HECO's ratemaking for the period 1996 through 2007 totaled approximately \$98.286 million.

As shown on line 25, the amount "provided" by ratepayers during 1996 through 2007 for pension cost was approximately \$96.551 million (\$98.286 million NPPC included in HECO's rates from column F, less the net amount of SFAS 87 pension accruals of \$1.735 million from column B). In comparison with the pension funding contributions of \$49.635 million that HECO made (from column C), the \$96.551 million provided by ratepayers exceeds HECO's funding contributions by \$46.916 million, as shown on line 27.

Thus, ratepayers have provided approximately \$47 million for pension cost in addition to what HECO has paid for funding contributions into the pension trust for the period 1996 through 2007.

The CA's presentation, while not identical, is similar in conclusion. As explained in the response to HECO/CA-IR-303(a):

"It is the Consumer Advocate's position that no party has "funded" the pension asset balance that HECO seeks to include in rate base. Referring to Exhibit CA-302 (also, HECO-1021, as revised by HECO T-10 June 2007 Update, Attachment 10, page 2), the only amounts "funded" are the contributions to the pension trust reflected in the column titled "Trust Contributions." It cannot be overstated or overemphasized that HECO is not seeking to include the "Trust Contributions" in rate base. Rather, HECO is seeking to include in rate base the amount of cumulative contributions in excess of cumulative NPPC "as recorded" by the Company-a difference resulting from an accounting entry that does not represent any funded amounts. Virtually the entire pension asset "difference" (i.e., 97.74% per Exhibit CA-302) that HECO seeks to include in rate base is directly attributable to the calendar years in which the Company recorded negative NPPC - negative amounts that have never been recognized in setting utility rates. It is the Consumer Advocate's position that ratepayers have provided HECO with the amount of NPPC included "in rates" not the amount of NPPC "as recorded" by HECO. Because of the extreme volatility in the amount of NPPC recorded by HECO each year and the infrequency of HECO rate cases between 1991 and 2005, it is the Consumer Advocate's position that the utility rates HECO has charged to ratepayers over the years have provided more than adequate compensation to the Company and that rate base inclusion of any portion of the pension asset would be inappropriate and unreasonable."

1 The CA's analysis, as explained in the response to HECO/CA-IR-303(e) resulted in the
2 following conclusion:

3 "Referring to Exhibit CA-303, the cumulative amount of NPPC included in HECO's
4 utility rates (\$152.5 million) significantly exceeds the cumulative amount of NPPC
5 recorded by HECO (\$48.2 million) by about \$104.3 million during the period 1991-2007.
6 And, based on this information, it is the Consumer Advocate's position that it would now
7 be improper to include the pension asset in rate base - unless and until the excess NPPC
8 included "in rates" above the NPPC "as recorded" is returned to ratepayers."
9

10 Both the CA's and DOD's analyses show a significant mismatch between the NPPC in
11 rates and the amount of pension asset being claimed by HECO. Such a significant mismatch
12 between the NPPC in rates paid by ratepayers and HECO's actual expenses and funding
13 payments is contrary to HECO's claim that the pension asset existing in the 2007 test year has
14 been funded by investors.
15

16 ***B. Agreement of HECO's witness concerning the fundamental principle***

17 After clarifying the term "funding," the same principle of comparing cumulative NPPC
18 included in rates and NPPC recorded on HECO's books with HECO's payments into the pension
19 trust should apply in the current HECO rate case in deciding this issue.

20 In Docket No. 04-0113, HECO's main witness on the pension asset issue, Ms. Sekimura,
21 agreed in principle under cross examination that, if it were demonstrated that ratepayers funded
22 the pension asset, it should not be included in rate base:

23 Q. You would agree in principle, though, that if the facts show that the ratepayers had
24 funded an asset then the ratepayers should not have to pay HECO a return on that asset,
25 correct?

26 A. That's correct.

27 (Docket No. 04-0113, Tr. 53.)

1 Indeed, in Docket No. 04-0113, Ms. Sekimura agreed to this principle multiple times during her
2 cross examination:

3 Q. So if the facts show that ratepayers funded the pension
4 asset on HECO's books, then that pension asset should not be
5 included in a rate base, should it? If the facts show that.

6 A. Can you state that again.

7 Q. So continuing that line of questioning. So if the
8 facts showed that ratepayers funded the pension asset on
9 HECO's books, then that pension asset should not be included
10 in rate base, correct?

11 A. That's correct.

12 (Docket No. 04-0113, Tr. 53-54.)

13 Given these admissions by Ms. Sekimura, it is the so-called "funding" and whether it was done
14 by investors or ratepayers is at the core of the dispute. As explained in the CA's response to
15 HECO/CA-IR-303(a),² however, there is apparently some confusion over the use of the term
16 "funding." HECO/DOD-IR-102(a), a virtually identical question to HECO/CA-IR-303(a), for
17 example, asked the same question of DOD: "Is it the DOD's position that ratepayers have
18 funded the "pension asset" claimed by HECO?" The DOD's clarification of the "funding"
19 terminology that is apparently causing some confusion, accordingly, was presented in the
20 response to HECO/DOD-IR-102(a) as follows:

21 "DOD's position is that the analysis on DOD-108, page 2, as well as the similar analysis
22 presented by CA in this proceeding shows that ratepayers have provided through payment
23 of rates more than sufficient funds to cover the amount of HECO's claimed pension asset,
24 consequently, it would be inappropriate and highly inequitable to ratepayers to include
25 such a pension asset in rate base. The pension asset that HECO is seeking to include in
26 rate base results from the amount of cumulative payments into the pension trust in excess
27 of the cumulative NPPC that was recorded by the Company. Moreover, virtually the
28 entire pension asset that HECO seeks to include in rate base is attributable to years in
29 which HECO recorded negative NPPC, and those negative amounts of NPPC recorded by
30 HECO in those years were never recognized in a test year for ratemaking purposes.
31 Finally, it must be recognized that ratepayers have provided to HECO the amount of
32 NPPC included in rates, not the amount of NPPC recorded by HECO in years when there
33 were no rate cases and no test years to capture the NPPC for the benefit of ratepayers.

² E.g., "It is the Consumer Advocate's position that no party has "funded" the pension asset balance that HECO seeks to include in rate base."

1 Because of the annual fluctuations in the annual amounts of NPPC recorded by HECO
2 and the infrequency of rate cases between 1991 and 2005, the rates charged to ratepayers
3 by HECO over the years have more than adequately compensated HECO for pension
4 costs and, given this factual situation, which is detailed on Exhibit DOD-108, page 2, it
5 would be highly unreasonable, inappropriate and unfair to ratepayers to include any
6 portion of the \$59.4 million pension asset requested by HECO in rate base."
7

8 The facts listed above from the DOD and CA analyses demonstrate that since HECO's
9 last fully decided rate case (and even since HECO first began recording NPPC accounting to
10 FAS 87), the cumulative amount of NPPC included in HECO's utility rates has significantly
11 exceeded the cumulative amount of HECO's contributions to the pension fund. Consequently, it
12 would be extremely inequitable to HECO's ratepayers to allow inclusion of a \$59.4 million
13 pension asset in rate base in the current rate case.
14

15 ***C. Precedent***

16 The Amended Proposed Decision and Order ("D&O") No. 23768 in Docket No. 04-0113
17 finds that prepaid pension asset should be excluded from rate base (page 98 of Amended
18 Proposed D&O). Prior to Docket No. 04-0113, HECO had never attempted to include a pension
19 asset in rate base. As HECO witness Ms. Sekimura stated in cross examination in Docket No.
20 04-0113: "in the previous HECO rate cases from 1990, 1992, 1994 and test year 1995 the
21 prepaid pension asset was not contemplated." Docket No. 04-0113, Tr. 57. She testified further
22 in that docket that HECO has never included a pension asset in rate base in any prior rate case
23 because it never had one on its books:

24 Q. Merely asking whether any previous proceeding the
25 Commission has issued a final order which approved a HECO
26 proposal, ... to include pension asset in
27 rate base? It never has, has it?

28 A. No, because there was no prepaid pension asset at the
29 time.

1 Tr. 58.

2 During her cross examination in Docket No. 04-0113, Ms. Sekimura confirmed that case was the
3 first HECO rate case in which HECO sought a pension asset in rate base:

4 Q. HECO has never included a pension asset in rate base in
5 any prior HECO rate case, has it? You discussed this
6 previously.

7 A. Right, because it wasn't necessary at that time.

8 Q. So, again, this case is the first case, first rate case
9 where HECO has included a pension asset in rate base and has
10 tried to charge ratepayers for a rate of return on that
11 pension asset, correct?

12 A. This is first for a HECO rate case.
13 Docket No. 04-0113, Tr. 61.

14 Docket No. 04-0113 was the first case in which HECO had requested inclusion of a
15 pension asset in rate base. Moreover, by attempting to include a pension asset in rate base for the
16 first time in Docket No. 04-0013, it was HECO, not the CA or DOD, that deviated from history
17 and precedent, as confirmed in the following quote from the Docket No. 04-0113 transcript of
18 the DOD's cross examination of HECO's witness, Ms. Sekimura:

19 Q. Now, we've already discussed that HECO has never
20 included a pension asset in a rate base prior to this case,
21 correct?

22 A. That's correct.

23 Q. And in HECO's last rate case there wasn't any pension
24 asset included in the rate base, is that correct?

25 A. That's correct.

26 Q. In its prior rate cases for reasons which you've
27 previously explained HECO did not even have a pension asset,
28 correct?

29 A. That's correct.

30 Q. So actually if we're going to look at the prior
31 practice for HECO, the prior practice would be that no pension
32 asset has ever been included in a rate base rate proceeding
33 before, correct?

34 A. That's correct.

35 Docket No. 04-0113, Tr. 62.
36

1 The factual situation in this docket is highly similar to Docket No. 04-0113 and the facts
2 demonstrate that the history of no rate base inclusion of a pension asset should continue through
3 this docket.

4 ***D. The pension asset should be excluded from HECO's rate base, as recommended by the***
5 ***DOD and CA***
6

7 The Commission should consider the facts presented by DOD and CA in evaluating
8 whether shareholders or ratepayers funded HECO's pension asset. The facts are presented in the
9 DOD and CA testimony and are concisely summarized on DOD-108 and CA-304, as well as in
10 DOD's response to HECO/DOD-IR-101 and 102 and HECO/CA-IR-302 and 303. DOD submits
11 that, when the Commission carefully considers the facts that have been presented by all of the
12 parties, including the presentations on DOD T-1 and DOD-108 and CA T-3 and CA-302 through
13 304 and in response to HECO/DOD-IR-101 and 102 and HECO/CA-IR-302 and 303, the clear
14 conclusion is that ratepayers, not HECO investors, have paid for NPPC included in rates in more
15 than sufficient amounts to cover the build-up in HECO's pension asset since HECO's last fully
16 decided rate case. Consequently, under such factual circumstances it would be highly inequitable
17 to include HECO's pension asset in rate base in the current case.
18

19 ***E. HECO's argument for prudent investment***

20 The pension asset is not utility plant. Pension fund contributions are not investments in
21 gross utility plant. Pension fund contributions go into a trust for the benefit of HECO
22 employees. Fund contributions are not assets that are providing utility service. The HECO
23 analogies are incorrect, and the prudence argument is a red herring. Fund contributions are not
24 analogous to Gross Plant investments because Gross Plant investments represent physical

1 facilities that provide service to present and future ratepayers. Contrary to this, payments to the
2 Pension Trust Fund represent payment for present and past labor services used in providing
3 service to ratepayers. Thus the contrast is intangible personal services compared to physical
4 assets and present and past services compared to future services. These alone cause the analogy
5 to fail, but the most significant difference is measurement. The Prepaid Pension Asset is a
6 comparison of past funding of pension obligations and current NPPC to current funding of
7 pension obligations updated for changes in promised plan benefits and anticipated investment
8 earnings. In contrast, Net Plant is the remaining economic value of physical assets used to
9 provide service measured by deducting accumulated depreciation from gross plant. Again,
10 HECO is comparing fungible financial assets to physical assets to make the analogy. Such a
11 comparison fails because the nature of the items compared is fundamentally different. Gross
12 plant cost is measured by historical actual costs while Pension Fund contributions are based on
13 management judgment and a variety of measurements including factors mentioned by the
14 Financial Accounting Standards Board in their summary of FAS 87. The relevant section is
15 quoted here:

16 “The Board has concluded, as did the APB in 1966, that net pension cost for a period is
17 not necessarily determined by the amount the employer decides to contribute to the plan for that
18 period. Many factors (including tax considerations and availability of both cash and alternative
19 investment opportunities) that affect funding decisions should not be allowed to dictate
20 accounting results if the accounting is to provide the most useful information.”

21 Moreover as explained by CA witness Carver: “Unlike the Company’s investment in
22 other assets (e.g., fuel oil inventory, prepaid insurance, electric poles, generating plants,
23 overhead lines, etc.), HECO did not expend any funds to purchase or acquire the prepaid pension

1 asset, which merely represents the cumulative differences between FAS87 based NPPC and the
2 actual contributions to the pension fund.”³

3 Whether the pension asset is “prudent” or not is not being disputed in the current HECO
4 rate case (nor was the “prudence” of the pension asset a subject of dispute in Docket No. 04-
5 0113.) The real dispute concerns whether, given its prior ratemaking history relating to pension
6 costs, HECO has demonstrated that its investors have funded the pension asset in such a manner
7 as to warrant rate base inclusion. DOD submits that the correct answer to this real issue is: “no.”

8 Both the CA and DOD presentations of the prior ratemaking history of pensions at HECO
9 show that the amounts of NPPC included in rates was more than sufficient to cover the amount
10 of pension asset being claimed by HECO. What is being disputed in this proceeding is not
11 HECO's test year NPPC amount, but whether HECO should be allowed to include a pension
12 asset in rate base when ratepayers have paid far more in pension expense than HECO has paid
13 into the pension trust fund. The facts, as set forth on DOD-108, page 2, and CA-304
14 demonstrate that it would be inequitable to charge ratepayers for a return on HECO's pension
15 asset. HECO has not demonstrated that its pension asset has been funded by shareholders, and it
16 should therefore be removed from rate base, based on the facts presented to the Commission in
17 this proceeding. In summary, based on the evidence presented, it would be inequitable and
18 inappropriate to include a pension asset in HECO's rate base in the current rate case.

19
20 ***F. Provisions of the Settlement***

21 The pension tracker that was agreed to by the parties to this case in the settlement
22 includes the following provision⁴:

³ CA-T-3, at 22, lines 3-8.

⁴ See HECO T-10, Attachment 2, page 4 of 5, Final Settlement, paragraph 8; emphasis in original.

1 “Any prepaid pension asset or accrued liability recorded pursuant to the terms and
2 conditions of FAS87 (as opposed to regulatory assets arising from the provisions of this
3 proposed tracking mechanism) will not be included in Rate Base in any future rate case,
4 except for the cumulative net ratepayer benefits previously identified is allowed by the
5 Commission. The regulatory assets/liabilities discussed herein specifically identify all
6 rate base includable amounts for pension differences.”
7

8 Also, paragraph 6 of the agreed-upon pension tracker provides that: “the objective of this
9 tracking mechanism is that, over time, the Company will recover through rates FAS87-based
10 NPPC.”⁵ Paragraph 6 of the pension tracker provides for establishing a separate regulatory asset
11 or liability to account for any charges or credits to equity (e.g., decreases to other comprehensive
12 income) caused by applying the provision of FAS87, FAS 158, or any other FASB statement or
13 procedure that requires accounting adjustments due to the funded status or other attributes of the
14 Company’s pension plan.

15 While these provisions in the agreed-upon pension tracker do not expressly prohibit a
16 pension asset from being included in rate base in HECO’s current rate case, including a pension
17 asset in rate base in the current HECO rate case would be conceptually inconsistent with the
18 provisions of the above quote from the settlement. In the current rate case, the presentations of
19 the CA and DOD have demonstrated that HECO ratepayers have not received sufficient benefits
20 to justify the inclusion of a pension asset in rate base. Indeed, both the CA and DOD
21 presentations of the prior ratemaking history of pensions at HECO show that the amounts of
22 NPPC included in rates was more than sufficient to cover the amount of pension asset being
23 claimed by HECO.
24

⁵ Id., at page 3 of 5.

1 ***G. Other Jurisdictions***

2 HECO has also argued that "other jurisdictions have allowed a prepaid pension asset to
3 be included in rate base."⁶ This is somewhat misleading because not all other commissions have
4 allowed all of the utilities they regulate to include a pension asset in rate base, and certainly not
5 under all circumstances. The decisions are mixed. Some regulatory commissions have allowed
6 a pension asset in rate base under some circumstances for some utilities, others did not. This
7 issue was briefed in Docket No. 04-0113. Some utilities that have pension assets apparently do
8 not even propose to include their pension asset in rate base.⁷ DOD submits that what other states
9 have decided concerning whether a particular utility's pension asset should be included in rate
10 base, is not and should not be determinative of how HECO's pension asset should be treated in
11 the current rate case, because the factual analysis and regulatory history of the amounts of NPPC
12 that have been included in rates for HECO is specific to HECO. The CA's witness, Mr. Carver,
13 has presented evidence to distinguish the analysis and facts pertaining to HECO's pension asset
14 from those involving HECO's affiliate, Hawaiian Electric Light Company (HELCO).⁸ Based on
15 his analysis, CA witness Carver recommended that HELCO's pension asset be included in rate
16 base; however, because of the different factual situation existing at HECO, he recommends that
17 HECO's pension asset be excluded from rate base, specifically: "the evidence does not support
18 the rate base inclusion of HECO's average prepaid pension asset."⁹

⁶ See, e.g., HECO T-10 at page 78.

⁷ See, e.g., the Union Electric Company example cited in CA-T-3 on pages 10-11.

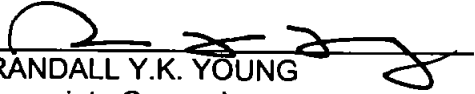
⁸ See CA-T-3, pages 12-14.

⁹ Id at 48, lines 5-6.

III. Proposed Conclusions of Law

1. The primary issue for briefing is whether HECO should be allowed to include a pension asset in rate base.
2. It would be inappropriate to include a pension asset in rate base when the NPPC included in rates has substantially exceeded the amounts HECO has paid into the pension trust fund. HECO's prior ratemaking history relating to pension costs as demonstrated in the analyses presented by the CA and DOD show that the amounts of NPPC included in rates was more than sufficient to cover the amount of pension asset currently claimed by HECO as a pension asset.
3. The analyses set forth on DOD T-1 and DOD-108, page 2, and CA-T-3 and CA-304 demonstrate that it would be inequitable to charge ratepayers for a return on HECO's pension asset.
4. HECO has failed to demonstrate that its investors have funded the pension asset.
5. Consequently, HECO's pension asset should be excluded from rate base in the current rate case.

DATED: Honolulu, Hawaii, October 26, 2007


RANDALL Y.K. YOUNG
Associate Counsel
Naval Facilities Engineering Command,
Pacific

CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW was duly served upon the following parties, by personal service, hand-delivery, and/or U.S. mail, postage prepaid, and properly addressed pursuant to HAR sec. 6-61-21(d).

William A. Bonnet
Vice President, Government and Community Affairs
Hawaiian Electric Company, Inc.
P.O. Box 2750
Honolulu, Hawaii 96840-0001


Dean K. Matsuura
Director, Regulatory Affairs
Hawaiian Electric Company, Inc.
P.O. Box 2750
Honolulu, Hawaii 96840-0001

Thomas W. Williams, Jr., Esq.
Peter Y. Kikuta, Esq.
Goodsill Anderson Quinn & Stifel
1800 Alii Place
1099 Alakea Street
Honolulu, Hawaii 96813

Department of Commerce and Consumer Affairs
State of Hawaii
Division of Consumer Advocacy
335 Merchant Street, Room 326
Honolulu, Hawaii 96813

6 Copies

DATED: Honolulu, Hawaii, October 26, 2007


RANDALL Y.K. YOUNG
Associate Counsel
Naval Facilities Engineering Command,
Pacific